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In The
Supreme Court of The United States

October Term, 1972

No. 71-1401

IN THE MATTER OF
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY, DEBTOR

Richard Joyce Smith, Trustee of the Property of The New York, New Haven and Hartford Railroad Company, Debtor;

Petitioner

v

George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, Trustees of the Property of Penn Central Transportation Company, Debtor; Manufacturers Hanover Trust Company, as Mortgage Trustee; and Penn Central Transportation Company;

Respondents

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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Dated: October 13, 1972

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Manufacturers Hanover Trust Company, as Mortgage
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**ON PETITION FOR CERTIORARI TO
THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR REHEARING

Richard Joyce Smith, Trustee of the Property of the New York, New Haven and Hartford Railroad Company, Debtor ("Petitioner"), respectfully petitions the Court as follows:

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1. On April 28, 1972, Petitioner filed a Petition for Certiorari to the United States Court of Appeals for the Second Circuit (the "Second Circuit Petition"), Docket No. 71-14-01.

2. On August 30, 1972, because of companion facts and issues, Petitioner also filed a Petition for Certiorari Before Judgment to the United States Court of Appeals for the Third Circuit (the "Third Circuit Petition"), Docket No. 72-356.

3. The Third Circuit Petition involves a decision of the United States District Court for the Eastern District of Pennsylvania entered in direct conflict with the judgment of the United States District Court for the District of Connecticut. The judgment of the District Court for Connecticut is the subject of the Court of Appeals decision treated with in the Second Circuit Petition. On the merits, the two petitions involve substantially identical issues. In addition, the conflict in the district court decisions raises separate, important issues of *res judicata* presented in the Third Circuit Petition but not in the Second Circuit Petition.

4. On October 10, 1972, apparently prior to consideration of the Third Circuit Petition, this Court denied the Second Circuit Petition.

5. Because of the procedural posture of the two cases, the interrelationship of the underlying facts, and the bearing upon disposition of the Second Circuit Petition of the pending Third Circuit Petition, appropriate consideration of the questions involved in the Second Circuit Petition fairly require its consideration together with the Third Circuit Petition.

WHEREFORE, this Court should grant rehearing of the Second Circuit Petition in order to consider it concurrently with the Third Circuit Petition, and should grant certiorari in both cases.

Respectfully submitted,

Of Counsel:

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JAMES WM. MOORE

JOSEPH AUERBACH
Attorneys for
Richard Joyce Smith, Trustee

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CERTIFICATE OF COUNSEL

I, Joseph Auerbach, counsel for Richard Joyce Smith, Petitioner, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2 of the Rules of this Court.

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Joseph Auerbach

Counsel for Richard Joyce Smith,
Petitioner

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